

O'HAGAN MEYER
THEODORE C. PETERS (SBN 235115)
JOHN M. BEEMER (SBN 302654)
2615 Pacific Coast Highway, Suite 300
Hermosa Beach, CA 90254
Tel: 310.807.1100 | Fax: 310.807.1115
Email: tpeters@ohaganmeyer.com
Email: jbeemer@ohaganmeyer.com

Attorneys for Defendants
WALMART INC.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT DONALD DAVIS,

Plaintiffs,

vs.

WALMART, INC.; MANAGER ANGIE
CARRELES and DOES 1 to 50, Inclusive

Defendants.

Case No.: 1:22-cv-01381-ADA-CDB

**[PROPOSED] STIPULATED
PROTECTIVE ORDER AS
MODIFIED**

Complaint Filed: August 24, 2022
Trial Date: October 22, 2024

1. INTRODUCTION

1.1 PURPOSES AND LIMITATIONS

Discovery in this action may involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use

for any purpose other than prosecuting this litigation may be warranted. Accordingly, the Parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The Parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The Parties further acknowledge, as set forth in Section 12.3 below, that this Order does not entitle them to file Confidential Information under seal; Civil Local Rule 141 sets forth the procedures that must be followed and the standards that will be applied when a Party seeks permission from the Court to file material under seal.

1.2 A DESCRIPTION OF THE TYPES OF INFORMATION ELIGIBLE FOR PROTECTION UNDER THE ORDER, WITH THE DESCRIPTION PROVIDED IN GENERAL TERMS SUFFICIENT TO REVEAL THE NATURE OF THE INFORMATION:

[Pursuant to Local Rule 141.1(c)(1)]

(a) This action is likely to involve information regarding internal policies and procedures of Defendant, information stemming from and involving Defendant's security and video surveillance systems, and information involving Defendant's actions in regard to this and prior injury claims in its store's premises. The action is also likely to involve information regarding Defendant's customers' and employees' personal information and personnel files.

///

(b) The action will also likely involve information regarding Plaintiff's medical records, health information, and other valuable research on Plaintiff's person including personal identifying information.

1.3 A SHOWING OF PARTICULARIZED NEED FOR PROTECTION AS TO EACH CATEGORY OF INFORMATION PROPOSED TO BE COVERED BY THE ORDER:

[Pursuant to Local Rule 141.1(c)(2)]

Good cause exists for the entry of this Order due to particularized need for protection for the above categories of information, detailed as follows:

(a) In regard to Defendant's internal policies and procedures, information stemming from and involving Defendant's security and video surveillance systems, and information involving Defendant's actions in regard to this and prior injury claims in its store's premises, as well as information regarding Defendant's customers' and employees' personal information and personnel files:

Defendant treats, for good cause, its **information regarding its internal policies and procedures, regarding its internal business practices**, as this information is confidential and proprietary documentation of its business practices. This is not public information, but confidential and proprietary, and the disclosure of this information could harm Defendant's ability to conduct its business. Defendant has good cause to request the particularized protection of this information.

///

1 Defendant treats, for good cause, its **information stemming from and**
2 **involving Defendant's security and video surveillance systems**, as this
3 information is confidential and proprietary documentation of its business and
4 security practices. This is not public information, but confidential and
5 proprietary, and the disclosure of this information could harm Defendant's
6 ability to conduct its business. Defendant has good cause to request the
7 particularized protection of this information.
8
9

10 Defendant treats, for good cause, its **information involving Defendant's**
11 **actions in regard to this and prior injury claims in its store's premises**, as
12 this information is confidential and proprietary documentation of its business
13 practices. This is not public information, but confidential and proprietary, and
14 the disclosure of this information could harm Defendant's ability to conduct its
15 business. Defendant has good cause to request the particularized protection of
16 this information.
17
18

19 Defendant treats, for good cause, its **information regarding**
20 **Defendant's customers' and employees' personal information and**
21 **personnel files**, as this information is confidential and proprietary
22 documentation of its business practices, and relates to the third-party privacy
23 rights of protected personal identifying information. This is not public
24 information, but confidential and proprietary, and the disclosure of this
25 information could harm Defendant's ability to conduct its business, and invade
26
27
28

1 the third-party privacy rights of its employees and customers. Defendant has
2 good cause to request the particularized protection of this information.

3 (b) In regard to information regarding Plaintiff's medical records, health
4 information, and other valuable research on Plaintiff's person including personal
5 identifying information:
6

7 **Information involving Plaintiff's medical records, health**
8 **information, and other valuable research on Plaintiff's person,** may likely
9 involve personal identifying information and Plaintiff's privacy rights. The
10 parties have good cause to request the particularized protection of this
11 information.
12

13
14 1.4 A SHOWING AS TO WHY THE NEED FOR PROTECTION
15 SHOULD BE ADDRESSED BY A COURT ORDER, AS OPPOSED
16 TO A PRIVATE AGREEMENT BETWEEN OR AMONG THE
17 PARTIES:

18 [Pursuant to Local Rule 141.1(c)(3)]

19
20 Discovery in this action will involve production of confidential, proprietary, or
21 private information for which special protection from public disclosure and from use
22 for any purpose other than prosecuting this litigation may be warranted.

23
24 Despite the parties' good faith efforts and mutual assurances to keep the strict
25 confidentially of the information described above, due to the extreme need for the
26 confidentially of the information addressed, and the third-party privacy rights
27
28

involved, the parties submit that there remains an absolute need for court-ordered protection of this information via this Stipulated Protective Order.

Essentially, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

2. DEFINITIONS

2.1 Action: *Robert Donald Davis v. Walmart Inc., et al.*, Case No.: 1:22-cv-01381-ADA-CDB.

2.2 Challenging Party: a Party or Nonparty that challenges the designation of information or items under this Order.

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored, or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c) and as specified above in the Good Cause Statement.

1 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
2 support staff).

3 2.5 Designating Party: a Party or Nonparty that designates information or
4 items that it produces in disclosures or in responses to discovery as
5 “CONFIDENTIAL.”
6

7 2.6 Disclosure or Discovery Material: all items or information, regardless of
8 the medium or manner in which it is generated, stored, or maintained (including,
9 among other things, testimony, transcripts, and tangible things), that are produced or
10 generated in disclosures or responses to discovery in this matter.
11

12 2.7 Expert: a person with specialized knowledge or experience in a matter
13 pertinent to the litigation who has been retained by a Party or its counsel to serve as
14 an expert witness or as a consultant in this action.
15

16 2.8 House Counsel: attorneys who are employees of a Party to this Action.
17 House Counsel does not include Outside Counsel of Record or any other outside
18 counsel.
19

20 2.9 Nonparty: any natural person, partnership, corporation, association, or
21 other legal entity not named as a Party to this action.
22

23 2.10 Outside Counsel of Record: attorneys who are not employees of a Party
24 to this Action but are retained to represent or advise a Party and have appeared in this
25 Action on behalf of that Party or are affiliated with a law firm that has appeared on
26 behalf of that Party, including support staff.
27
28

1 2.11 Party: any Party to this Action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel of Record (and their
3 support staffs).

4 2.12 Producing Party: a Party or Nonparty that produces Disclosure or
5 Discovery Material in this Action.
6

7 2.13 Professional Vendors: persons or entities that provide litigation support
8 services (for example, photocopying, videotaping, translating, preparing exhibits or
9 demonstrations, and organizing, storing, or retrieving data in any form or medium)
10 and their employees and subcontractors.
11

12 2.14 Protected Material: any Disclosure or Discovery Material that is
13 designated as “CONFIDENTIAL.”
14

15 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
16 from a Producing Party.
17

18 3. SCOPE

19 The protections conferred by this Stipulation and Order cover not only
20 Protected Material (as defined above) but also any information copied or extracted
21 from Protected Material; all copies, excerpts, summaries, or compilations of Protected
22 Material; and any testimony, conversations, or presentations by Parties or their
23 Counsel that might reveal Protected Material.
24

25 Any use of Protected Material at trial will be governed by the orders of the trial
26 judge. This Order does not govern the use of Protected Material at trial.
27
28

1 4. DURATION

2 Even after final disposition of this litigation, the confidentiality obligations
3 imposed by this Order will remain in effect until a Designating Party agrees otherwise
4 in writing or a court order otherwise directs. Final disposition is the later of (1)
5 dismissal of all claims and defenses in this Action, with or without prejudice, or (2)
6 final judgment after the completion and exhaustion of all appeals, rehearings,
7 remands, trials, or reviews of this Action, including the time limits for filing any
8 motions or applications for extension of time under applicable law.
9

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Each Party or Nonparty that designates information or items for
12 protection under this Order must take care to limit any such designation to specific
13 material that qualifies under the appropriate standards. The Designating Party must
14 designate for protection only those parts of material, documents, items, or oral or
15 written communications that qualify so that other portions of the material, documents,
16 items, or communications for which protection is not warranted are not swept
17 unjustifiably within the ambit of this Order.
18

19 Mass, indiscriminate, or routinized designations are prohibited. Designations
20 that are shown to be clearly unjustified or that have been made for an improper
21 purpose (for example, to unnecessarily encumber the case-development process or to
22 impose unnecessary expenses and burdens on other parties) may expose the
23 Designating Party to sanctions.
24
25
26
27
28

1 If it comes to a Designating Party's attention that information or items it
2 designated for protection do not qualify for that level of protection, that Designating
3 Party must promptly notify all other Parties that it is withdrawing the inapplicable
4 designation.
5

6 5.2 Except as otherwise provided in this Order, Disclosure or Discovery
7 Material that qualifies for protection under this Order must be clearly so designated
8 before the material is disclosed or produced.
9

10 Designation in conformity with this Order requires the following:

11 (a) for information in documentary form (for example, paper or electronic
12 documents but excluding transcripts of depositions or other pretrial or trial
13 proceedings), the Producing Party must affix at a minimum the legend
14 "CONFIDENTIAL" to each page that contains Protected Material. If only a portion
15 or portions of the material on a page qualify for protection, the Producing Party must
16 clearly identify the protected portion(s) (for example, by making appropriate markings
17 in the margins).
18
19
20

21 A Party or Nonparty that makes original documents available for inspection
22 need not designate them for protection until after the inspecting Party has indicated
23 which documents it would like copied and produced. During the inspection and before
24 the designation, all material made available for inspection must be treated as
25 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
26 copied and produced, the Producing Party must determine which documents, or
27
28

1 portions thereof, qualify for protection under this Order. Then, before producing the
2 specified documents, the Producing Party must affix the “CONFIDENTIAL” legend
3 to each page that contains Protected Material. If only a portion or portions of the
4 material on a page qualify for protection, the Producing Party also must clearly
5 identify the protected portion(s) (for example, by making appropriate markings in the
6 margins).
7

8
9 (b) for testimony given in depositions, the Designating Party must identify the
10 Disclosure or Discovery Material that is protected on the record, before the close of
11 the deposition.
12

13 (c) for information produced in some form other than documentary and for any
14 other tangible items, the Producing Party must affix in a prominent place on the
15 exterior of the container or containers in which the information is stored the legend
16 “CONFIDENTIAL.” If only a portion or portions of the information warrant
17 protection, the Producing Party, to the extent practicable, must identify the protected
18 portion(s).
19
20

21 5.3 If timely corrected, an inadvertent failure to designate qualified
22 information or items does not, standing alone, waive the Designating Party’s right to
23 secure protection under this Order for that material. On timely correction of a
24 designation, the Receiving Party must make reasonable efforts to assure that the
25 material is treated in accordance with the provisions of this Order.
26

27 ///
28

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Any Party or Nonparty may challenge a designation of confidentiality at any time consistent with the Court's scheduling order.

6.2 The Challenging Party must initiate the dispute-resolution process (and, if necessary, file a discovery motion) under Local Rule 251.

6.3 The burden of persuasion in any such proceeding is on the Designating Party. Frivolous challenges, and those made for an improper purpose (for example, to harass or impose unnecessary expenses and burdens on other parties), may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties must continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Nonparty in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of people and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of Section 13 below (FINAL DISPOSITION).

///

///

Protected Material must be stored and maintained by a Receiving Party at a location and in a manner sufficiently secure to ensure that access is limited to the people authorized under this Order.

7.2 Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to the following people:

(a) the Receiving Party’s Outside Counsel of Record in this Action, as well as employees of that Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses and attorneys for witnesses to whom disclosure is reasonably necessary, provided that the deposing party requests that the witness sign the form attached as Exhibit A hereto and the witnesses will not be permitted to keep any confidential information unless they sign the form, unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed on by any of the Parties engaged in settlement discussions or appointed by the Court.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must

(a) promptly notify in writing the Designating Party. Such notification must include a copy of the subpoena or court order unless prohibited by law;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena

1 or order is subject to this Protective Order. Such notification must include a copy of
2 this Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be pursued
4 by the Designating Party whose Protected Material may be affected.
5

6 If the Designating Party timely seeks a protective order, the Party served with
7 the subpoena or court order should not produce any information designated in this
8 action as “CONFIDENTIAL” before a determination on the protective-order request
9 by the relevant court unless the Party has obtained the Designating Party’s permission.
10 The Designating Party bears the burden and expense of seeking protection of its
11 Confidential Material, and nothing in these provisions should be construed as
12 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
13 directive from another court.
14
15
16

17 9. A NONPARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
18 IN THIS LITIGATION

19 (a) The terms of this Order are applicable to information produced by a
20 Nonparty in this Action and designated as “CONFIDENTIAL.” Such information is
21 protected by the remedies and relief provided by this Order. Nothing in these
22 provisions should be construed as prohibiting a Nonparty from seeking additional
23 protections.
24

25 (b) In the event that a Party is required by a valid discovery request to
26 produce a Nonparty’s Confidential Information in its possession and the Party is
27
28

1 subject to an agreement with the Nonparty not to produce the Nonparty's Confidential
2 Information, then the Party must

3 (1) promptly notify in writing the Requesting Party and the Nonparty
4 that some or all of the information requested is subject to a confidentiality agreement
5 with a Nonparty;
6

7 (2) promptly provide the Nonparty with a copy of this Order, the relevant
8 discovery request(s), and a reasonably specific description of the information
9 requested; and
10

11 (3) make the information requested available for inspection by the
12 Nonparty, if requested.
13

14 (c) If the Nonparty fails to seek a protective order within 21 days of
15 receiving the notice and accompanying information, the Receiving Party may produce
16 the Nonparty's Confidential Information responsive to the discovery request. If the
17 Nonparty timely seeks a protective order, the Receiving Party must not produce any
18 information in its possession or control that is subject to the confidentiality agreement
19 with the Nonparty before a ruling on the protective-order request. Absent a court
20 order to the contrary, the Nonparty must bear the burden and expense of seeking
21 protection of its Protected Material.
22
23
24

25 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

26 If a Receiving Party learns that by inadvertence or otherwise, it has disclosed
27 Protected Material to any person or in any circumstance not authorized under this
28

1 Order, the Receiving Party must immediately notify the Designating Party in writing
2 of the unauthorized disclosures, use its best efforts to retrieve all unauthorized copies
3 of the Protected Material, inform the person or people to whom unauthorized
4 disclosures were made of the terms of this Order, and ask that person or people to
5 execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto
6 as Exhibit A.
7

8
9 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
10 PROTECTED MATERIAL

11 When a Producing Party gives notice to Receiving Parties that certain
12 inadvertently produced material is subject to a claim of privilege or other protection,
13 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
14 Procedure 26(b)(5)(B).
15

16 12. MISCELLANEOUS

17 12.1 Nothing in this Order abridges the right of any person to seek its
18 modification by the Court.
19

20 12.2 By stipulating to the entry of this Order, no Party waives any right it
21 otherwise would have to object to disclosing or producing any information or item on
22 any ground not addressed in this Order. Similarly, no Party waives any right to object
23 on any ground to use in evidence of any of the material covered by this Order.
24

25 12.3 A Party that seeks to file under seal any Protected Material must comply
26 with Local Rule 141. Protected Material may be filed under seal only pursuant to a
27
28

1 court order authorizing the sealing of the specific Protected Material at issue. If a
2 Party's request to file Protected Material under seal is denied, then the Receiving Party
3 may file the information in the public record unless otherwise instructed by the Court.
4

5 13. FINAL DISPOSITION

6 After the final disposition of this Action, as defined in paragraph 4, within 60
7 days of a written request by the Designating Party, each Receiving Party must return
8 all Protected Material to the Producing Party or destroy such material. As used in this
9 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
10 summaries, and any other format reproducing or capturing any of the Protected
11 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
12 must submit a written certification to the Producing Party (and, if not the same person
13 or entity, to the Designating Party) by the 60-day deadline that identifies (by category,
14 when appropriate) all the Protected Material that was returned or destroyed and
15 affirms that the Receiving Party has not retained any copies, abstracts, compilations,
16 summaries, or any other format reproducing or capturing any of the Protected
17 Material. Notwithstanding this provision, Counsel are entitled to retain an archival
18 copy of all pleadings; motion papers; trial, deposition, and hearing transcripts; legal
19 memoranda; correspondence; deposition and trial exhibits; expert reports; attorney
20 work product; and consultant and expert work product even if such materials contain
21 Protected Material. Any such archival copies that contain or constitute Protected
22 Material remain subject to this Order as set forth in Section 4 (DURATION).
23
24
25
26
27
28

14. SANCTIONS

Any willful violation of this Order may be punished by civil or criminal contempt, financial or evidentiary sanctions, reference to disciplinary authorities, or other appropriate action at the discretion of the Court.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: August __, 2023

Respectfully submitted,

O'HAGAN MEYER

By: ____/s/____

THEODORE C. PETERS

JOHN M. BEEMER

Attorneys for Defendant

Walmart, Inc.

[The filer of the document attests that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.]

DATED: August __, 2023

Respectfully submitted,

LAW OFFICES OF JACOB EMRANI

By: ____/s/____

Arturo Salinas

Attorney for Plaintiff

Robert Donald Davis

IT IS SO ORDERED.

Dated: August 22, 2023


UNITED STATES MAGISTRATE JUDGE